

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:) Case No. 17-17361
)
RICHARD M. OSBORNE,) Chapter 7
)
Debtor.) Judge Arthur I. Harris

**APPLICATION TO EMPLOY
AG REAL ESTATE GROUP, INC. AND ERIC M. SILVER AS REALTOR AND
PROPERTY MANAGER, NUNC PRO TUNC TO AUGUST 1, 2019**

Kari B. Coniglio (the “Trustee”), the interim chapter 7 trustee for the bankruptcy estate of Richard M. Osborne (the “Debtor”), applies (the “Application”) for entry of an order, substantially in the form attached as **Exhibit 1**, authorizing her to employ Ag Real Estate Group, Inc. and Eric M. Silver (together, “Ag”) as realtor and property manager of the Properties (defined herein) pursuant to section 327 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), nunc pro tunc to the date of this Application. In support of this Application, the Trustee submits the *Declaration of Eric M. Silver in Support of Application to Employ Ag Real Estate Group, Inc. as Property Manager and Realtor* (the “Silver Declaration”), attached as **Exhibit 2**, and respectfully represents as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory and legal predicates for the relief requested herein are section 327(a) of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016.

Background

4. On December 17, 2017, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code [Doc. No. 1].

5. The Debtor's bankruptcy proceeding was converted to a case under chapter 7 of the Bankruptcy Code on July 3, 2019 (the "Conversion Date") [Doc. No. 482].

6. On the Conversion Date, the Trustee was appointed the interim trustee for the Debtor's estate [Doc. No. 484].

7. The Debtor owns a number of properties from which he collects rents. The list of the rental properties subject to this application (the "Properties") is attached as an exhibit to the proposed engagement letter with Ag, which is attached as **Exhibit 3**.

8. The Court has authorized the Trustee to operate the Properties for a period of six months, through and including January 23, 2020 [Doc. No. 549].

9. The Court also authorized the Trustee to manage the Properties through a property manager, who will interface with tenants, lease properties, collect rents, make minor repairs, allow tenants to offset rents for necessary repairs made to properties, and perform any other activities that arise in the ordinary course of managing rental properties [Docket No. 549].

Relief Requested

10. The Trustee requests entry of an order under section 327(a) of the Bankruptcy Code authorizing her to employ Ag as realtor and property manager of the Properties.

Law and Analysis

11. Sections 327(a) of the Bankruptcy Code allows the Trustee, with the Court's approval, to "employ one or more . . . professional persons . . . that do not hold or represent an

interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title."

12. A trustee's application for the employment of attorneys shall state

specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a).

13. The Trustee has selected Ag and its president, Mr. Silver, for their experience in the management and brokerage of real property. Ag's professional staff has over seventy-two years of combined experience in real estate brokerage and property management in Northeast Ohio. Mr. Silver is a licensed real estate broker who has more than twenty-five years of experience in real estate matters. Moreover, having acted as a court-appointed receiver, Mr. Silver is familiar with the management and brokerage of real property in the counties where the Properties are situated.

14. The Trustee has determined it is necessary to obtain a broker and property manager. The Trustee is currently examining whether she intends to sell or abandon the Properties. Until that determination is made, Ag will collect rents (thus ensuring rents are paid to the estate) and ensure that the Properties do not become abandoned or fall into disrepair. In the event the Trustee decides to sell the Properties, the Trustee requires the assistance of an experienced professional to assist in the disposition of the Properties. These services are necessary to assist the Trustee in making important financial decisions regarding the disposition of the Properties and to maximize the value of the assets.

15. Subjects to further order of this Court, the Trustee proposes that Ag, as broker, render the following services: market the Properties for sale; assist in negotiating any transactions involving the Properties; analyze offers and offer recommendations; assist with completing sales transactions; and appear at hearings, if needed.

16. The Trustee further proposes that Ag, as property manager, render the following services: act as the Trustee's direct point of contact for all tenants, government authorities, vendors, and suppliers; collect rent for occupied properties; receive and process all direct property operating expenses; comply with all applicable laws relating to rental properties; offer recommendations for preventative maintenance, repairs, tenant "make-ready" work; see that vacant properties are being properly advertised; screen tenants; and coordinate maintenance, lawn moving, trash removal, and any similar activities for all vacant parcels of land.

17. Subject to allowance by the Court, Ag will charge the following amounts for its brokerage services:

- a. 10% fee on vacant parcels of land
- b. Commercial real estate (improved):
 1. 6% of the first \$1,000,000 of gross sales price
 2. 4% of the balance of the gross sales price exceeding \$1,000,000
- c. Residential real estate (improved)
 1. 7% of the first \$100,000 of gross sales price
 2. 5% of the balance of the gross sales price exceeding \$100,000
- d. Reimbursement of up to \$5,000 of actual, reasonable, third party out-of-pocket marketing expenses (i.e., signage, advertising, etc.)

18. Subject to allowance by the Court, Ag will charge the following amounts for its property management services:

- a. One-time start-up fees:
 - 1. \$250 per tenant, for properties that are occupied (review leases and data entry into property management/accounting system)
 - 2. \$100 per parcel, for properties that are vacant and/or unimproved
- b. Management fees (residential properties):
 - 1. \$150 per tenant per month
 - 2. New tenant lease—fee equal to one month rent
 - 3. Lease renewal—\$200 administrative fee
 - 4. \$50 per vacant residential or commercial unit per month (not applicable to vacant land)
 - 5. Evictions—\$250 plus actual court costs and legal fees
 - 6. Repairs/tenant make ready work—actual cost plus 15%
 - 7. Management company to retain late fees collected
- c. Management fees (commercial properties): greater of either
 - 1. \$500 per month, or
 - 2. 6% of gross collected monthly rent

19. The Trustee represents that, as set forth in the Silver Declaration, Ag has no connection with the Debtor, his creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee, any person employed in the office of the United States Trustee, or any United States Bankruptcy Judge in this district, other than as specifically stated in the Silver Declaration and as follows:

- a. Mr. Silver is the court-appointed receiver in the matter *Wells Fargo Bank, National Association v. U.S. Tommy, Inc., et al.*, Case No. CV-11-750490, in the Court of Common Pleas of Cuyahoga County, Ohio. Nathan Sinn represents Mr. Silver in that case. Mr. Sinn represents a creditor in this action.

b. Mr. Silver is a personal friend of Howard Rabb. Mr. Rabb is a partner in the firm of Dworken and Bernstein Co., L.P.A. (“Dworken”). Dworken represented the Debtor as well as other Debtor-related entities.

20. Ag is disinterested and holds no claims or interest adverse to the Debtor’s estate within the meaning of sections 101(14) and 327 of the Bankruptcy Code.

21. Ag will continue to conduct an ongoing review of its files to ensure that no disqualifying circumstances arise, and if any new relevant facts or relationships are discovered, Ag will supplement his disclosure to the Court.

WHEREFORE, the Trustee requests entry of an order, substantially in the form attached hereto as **Exhibit 1**, (a) authorizing the Trustee to employ Ag as broker and property manager of the Properties on the terms and conditions set forth herein, and (b) granting such other and further relief as is just and proper.

Respectfully submitted,

/s/ Patrick R. Akers

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NOTICE

Pursuant to Local Bankruptcy Rule 9013-1, any objection to this application must be filed by August 15, 2019. If no response or objection is timely filed, the Court is authorized to grant the relief without further notice.

/s/ Patrick R. Akers

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Counsel to the Interim Trustee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application to Employ Ag Real Estate Group, Inc. and Eric M. Silver as Realtor and Property Manager, Nunc Pro Tunc to August 1, 2019* was served via the Court's Electronic Case Filing System on August 1, 2019 on the following who are listed on the Court's Electronic Mail Notice List:

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